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PHYSICAL DOCUMENT

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RE: REVOLVING LOAN PROGRAM AS PART OF TERMS OF SETTLEMENT

**Author:** Woolner, Rhodora

**Document Type:** LETTER

**LSA(s):**

**Co-Counsel:**

**Counsel LSA(s):**

**Distribution List:** Woolner, Rhodora (ENRD); Lattin, Sue (ENRD); Rose, Robert (ENRD); Norwood, Richard (ENRD); Hebb, Kevin M. (ENRD); True, Michael (ENRD); Harvey, Judy (ENRD); Williams, Kim (ENRD)

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**DJ#:** 90-1-24-03768

**Case Name:** CALIFORNIA RIVER WATCH V. CITY OF WILLITS

**Court:** CA N.D. Cal.; 9th Cir.

**Notes:** SCANNED/UNASSIGNED

**Double-Sided:**

**Received Date:** 8/31/2015

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Harvey, Judy

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August 25, 2015

United States Department of Justice  
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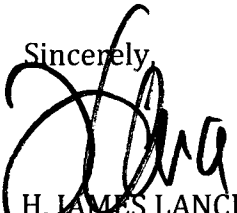
Attention: Judy Harvey, Attorney

Re: California River Watch v. City of Willits, U.S. District Court,  
Northern District of California, Case No. CV 13 3395

Dear Ms. Harvey,

The above-entitled lawsuit alleging violations of the Clean Water Act by the City of Willits was settled and voluntarily dismissed without objection from the Department of Justice following its 45-day review per 33 U.S.C. §1365 (c)(3).

One of the terms of settlement is a requirement that the City invest the sum of \$35,000 into a revolving loan program and implement that program to provide partial loans to City residents for the replacement or repair of private sewer laterals. I am writing to inform you and plaintiff's attorney that the Willits City Council, at its meeting held on August 12, 2015, adopted the enclosed resolution implementing the lateral loan program. I have also attached a document describing the program details. The City staff will now promote the program and make loans to eligible applicants.

Sincerely,  
  
H. JAMES LANCE  
Willits City Attorney

DEPT. OF JUSTICE - ENVIRONMENTAL DIVISION  
15 AUG 31 PM 12:00

Enclosures 2

cc: Jerry Bernhaut, Esq.  
Adrienne Moore, City Manager

Corr

90-1-24-03768

**RESOLUTION NO. 2015-14**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILLITS ESTABLISHING A SEWER LATERAL REPAIR LOAN PROGRAM AND APPROPRIATING FUNDS FOR THE PROGRAM**

WHEREAS, the City of Willits recognizes that the quality of our local wastewater system is fundamentally important to our community's health and safety; and

WHEREAS, in addition to the sewer collection system that is the City's responsibility, aging private sewer facilities must also be repaired or replaced in order to ensure the health and safety of our community; and

WHEREAS, City was sued in 2013 by California River Watch, which alleged that the City was in violation of the Clean Water Act associated with the City's operation of the City's sewer plant and associated sewer collection system; and

WHEREAS, the City settled that lawsuit pursuant to the terms of a Settlement Agreement with California River Watch, dated June 5, 2014 (the "Agreement"), wherein the City agreed to set up a revolving low interest loan program ("Loan Program") according to terms recited in the Agreement, to provide partial loans for the replacement or repair of private sewer laterals, including the installation of property line clean outs, and to invest \$35,000 into the Loan Program.

NOW THEREFORE, the City Council of the City of Willits does hereby resolve as follows:

1. Funds in the amount of \$35,000 are appropriated for the Sewer Lateral Loan Program (Fund \_\_\_\_\_); and
2. The attached and incorporated by reference City of Willits Sewer Lateral Loan Program is established and staff is directed to formulate the appropriate documents and implement and administer the program.

The above and foregoing Resolution was introduced by Councilmember Madrigal seconded by Councilmember Orenstein, and passed and adopted at a regular meeting of the City Council of the City of Willits, held on the 12<sup>th</sup> day of August, 2015, by the following vote:

AYES: Stranske, Strong, Madrigal, Orenstein, and Burton  
NOES: None  
ABSENT: None



BRUCE BURTON, Mayor  
City Council of the City of Willits

ATTEST:



CATHY SANDERS  
City Clerk

## CITY OF WILLITS

### SEWER LATERAL REHABILITATION ASSISTANCE PROGRAM

LOW-INTEREST LOANS OF UP TO \$2,500 WITH PAYBACK PERIOD OF UP TO 3 YEARS

#### **Program Introduction**

The purpose of the Sewer Lateral Rehabilitation Assistance Program is to facilitate rehabilitation of privately-owned sewer laterals in the City of Willits wastewater service area.

Defective sewer lines can allow rain and irrigation water to make its way into the wastewater collection system. Sewer systems are not designed to handle this additional water flow, which can overwhelm the system and contribute to sewer overflows onto the street and ultimately into the rivers and streams. Proper maintenance also eliminates the possibility of sewer line overflows caused by pipe defects and blockages, which can result in significant sewer water damage both inside and outside a property.

The City has created a program to encourage property owners to repair their sewer laterals through the issuance of a loan, thereby contributing to the protection of public health and the environment through the reduction of wastewater spills.

#### **Definitions**

**Main Sewer:** Sewer pipelines located in street, highways, public ways, or private rights-of-way which are used to serve the general public.

**Side Sewer:** The part of the sewer system beginning at the foundation wall of any building and terminating in the sewer main.

**Building Lateral:** The portion of a side sewer beginning at the foundation wall of any building and terminating at the sewer cleanout, or if no sewer cleanout, the property line.

**Lateral Sewer:** The portion of a side sewer beginning at the sewer cleanout, or if no sewer cleanout, the property line, and terminating in the main sewer.

**Cleanout:** A pipe rising from the side sewer to the ground surface, with a removable cap or plug, which is used to access the side sewer to free blockages.

| **Building Cleanout:** A cleanout installed in front or at the side of a home.

| **Property Line Cleanout:** A cleanout installed at property line.

**Side Sewer Cleaning is Responsibility of the Property Owner**

A side sewer is the pipe that carries sanitary waste from a private building to the City's publicly owned sewer main. Property owners are responsible for cleaning plugs and clogs in the side sewer per City Ordinance 13.08.090. Property owners are also responsible for repairing and/or replacing their section of the side sewer (called the building lateral) including the building cleanouts. Building laterals are defined as extending from the property structure to the property line cleanout that is typically located at the street right-of-way or at the property line. The City is responsible for the structural integrity of that section of the side sewer (called the lateral sewer) extending from the property line cleanout to the main sewer.

If the side sewer does not have a property line cleanout, one can be installed as part of the rehabilitation project.

### **Funding and Availability**

Funding for the City of Willits Loan Program is provided entirely by the ratepayers of the Sewer Enterprise Fund of the City of Willits. Funding for the Sewer Lateral Rehabilitation Assistance Program is from a \$35,000 appropriation approved by the City Council in 2014. Funds are available on a first-come, first served basis. Because funds are limited, it is possible that not every eligible applicant will receive financial assistance.

### **Eligibility**

Loans are available to approved, qualified applicants who are registered owners of residential or commercial property within the City of Willits wastewater service area.

### **Eligible Expenses**

Only expenses approved by the City are covered under this program. Eligible expenses must be specifically related to the City-approved building lateral work. In general, eligible expenses include the side sewer inspection (including video inspection), installation of a "property line" cleanout if the side sewer doesn't already have one, design, building permits, plan review and inspection services, materials, equipment and contract labor to complete rehabilitation work consistent with a qualified contractor's bid. Above-ground landscaping and paving related to the work also may be eligible. Labor provided by the applicant or tenant is not eligible for reimbursement.

### **Design Guidelines**

All sanitary sewer work performed within the City wastewater service area shall conform to the Public Works Department Engineering Standard Plans and Specifications for Public Improvements (City Standards) and the Uniform Plumbing Code (UPC). To be eligible all improvements are required to be completed by a licensed plumber or contractor with recent experience performing similar work.

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## **LOAN DETAILS**

### **1. Amount**

The loan assistance amount is a minimum of \$1,000 or up to a maximum of \$2,500. The actual amount of the loan shall be limited to the contractor's bid amount, which bid shall be subject to review and approved by the Public Works Director.

### **2. Interest**

The loan program interest rate will be reviewed and established by the City Council on an annual basis and adjusted to market rates, with a minimum interest rate charge of 2%.

### **3. Repayment**

Repayment of the loan, including accrued interest will be on a quarterly basis commencing three months from the date of final disbursement of loan proceeds. In the event of default in loan repayment in excess of thirty days, or in the event of the voluntary or involuntary transfer of title, contract to sell or transfer, subordination of the City's loan or demolition of the property, the outstanding balance (including principal and interest) shall be payable immediately.

### **4. Term**

The amortization period for the repayment of the loan shall not exceed 3 years. There is no penalty for early payment.

### **5. Security**

The loan shall be secured by a deed of trust (mortgage) in a form satisfactory to the City Attorney and recorded against the title of the property.

### **6. Risk Assessment**

Applicants will be required to provide an estimate of the value of their property that is the subject of the application and provide details of existing loans and indebtedness related to the property. Properties in default of any mortgage, tax, lien or other encumbrance are not eligible for the program. Upon applicant's authorization, City may also conduct a credit check at applicant's expense as part of City's risk assessment. The City Manager or her designee has the discretion upon review of the foregoing information, and in consultation with the Public Works Director or his designee, to approve or deny all loan applications under this program.

## **Program Application Procedure (Flowchart)**

### **Step 1: Complete a Program Application**

Interested property owners are encouraged to contact the Public Works Director at (707) 459-7143 to discuss the assistance program process and proposed work. The loan application form is available at City Hall, 111 E. Commercial St., Willits, CA and on the City's website at [www.thecityofwillits.com](http://www.thecityofwillits.com).

The applicant should submit the completed application and attach any assessment documentation, including, a side sewer video inspection report and contractor's repair bid. If no video inspection has been completed the City may inspect the lateral where possible. If it is not possible for the City to do so, then the applicant shall be responsible for having a video inspection completed at the applicant's expense. Once the issue has been identified and documented the applicant shall provide at least two written cost estimates from licensed plumbers or contractors to perform the proposed work. It is the property owner's responsibility to obtain the necessary building permit.

### **Step 2: City Staff Review and Approval**

The City will verify ownership of the property.

The City will work with the property owner to finalize the application to determine if it is complete and if the proposed work is eligible under the program.

The City will review the side sewer improvement plans and cost estimates. If necessary, the City may require a pre-construction inspection to verify that the proposed improvements are in conformance with City standards. Inspection fees are included in the cost of the building permit. City will determine eligibility of the proposed improvements for the City's loan program and notify the applicant of their eligibility status..

### **Step 3: Execution of Loan Agreement**

The property owner shall be required to execute the loan repayment agreement with the City for the finalized work and costs. The property owner will sign the following:

- Loan Application
- Promissory Note
- Deed of Trust
- Disclosure Statement
- Rescission Notice

The City Manager, or her designee, will review the loan application materials and, in consultation with the Public Works Director or his designee, will determine whether to approve or deny the loan application. If approved, the City will determine the loan amount and terms based on consideration of:

- The selected bid contractual amount
- Availability of funding from City
- Prioritization of projects
- Other factors deemed appropriate to City staff to carry out the intent and purpose of the program.

Upon approval, the City will issue a loan approval letter to the property owner, and three (3) day rescission notice. If following expiration of the three (3) day rescission period, the property owner does not rescind the loan, the Deed of Trust shall be recorded at the Mendocino County Recorder's Office. The act of recording provides constructive notice that the property has been encumbered. When the deed is fully paid the City will promptly reconvey the loan, thus releasing the security for the debt.

The property owner will be given notice to have their contractor proceed with the work. All necessary City permits must be obtained prior to commencement of the work. The work shall not be backfilled until inspected and approved by the City Public Works Department.

#### Step 4: Completion of the Building Lateral Work

The property owner will be responsible for managing the contractor's work and ensuring that the project is completed as approved by the City. This includes scheduling the work, obtaining City permits, and monitoring the activities of the contractor. The property owner is required to obtain approval from the City for any additional work due to unforeseen circumstances that will be reimbursed with loan repayment agreement funds, prior to the start of said additional work.

Work must be completed within 120 days from the date of approval of the loan. Failure to complete the improvements by the required completion date may, at the City's discretion, result in the forfeiture of the loan or that portion that represents the outstanding work not done by the completion date. City payment for the project will be made only when the work is fully completed and approved.

#### Step 5: City Work Inspection

A post repair/replacement inspection by the City is required prior to acceptance of the work. The cost of inspection is included in the building permit fees. The property owner shall schedule the inspection at least 24 hours in advance of the desired inspection time. If the City inspector finds the work needs correction before it can be accepted, the property owner shall be responsible for having the corrections made and, upon completion, shall contact the City for re-inspection.



#### Step 6: Certificate of Completion

The City will provide the property owner with a Certificate of Completion documenting that the building lateral was rehabilitated in accordance with the approved plans and the date thereof.

#### Step 7: Payment

The property owner shall submit all invoices and documentation including all necessary permits and inspections, an itemized contractor statement of costs, and a Notice of Completion from the City accepting the improvements and authorizing payment. The City will authorize and make payment to the property owner for the final costs of the work performed, plus any additional approved work. The property owner shall retain all receipts, permits, inspection reports and other documents. The property owner shall make regular payments per the loan repayment agreement.

H. JAMES LANCE  
ATTORNEY AT LAW

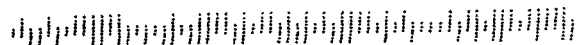
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